

DOCKET NO. AAN-CV20-6039670-S : SUPERIOR COURT
DIANNA PIAZZA : J.D. OF NEW HAVEN
V. : AT MILFORD
JOHN GALLAGHER and BEATRIZ : SEPTEMBER 30, 2020
GALLAGHER

**OBJECTION TO DEFENDANTS' REQUEST TO REVISE
PLAINTIFF'S COMPLAINT**

Pursuant to Practice Book Section 10-35, et. seq., the Defendants, John Gallagher and Beatriz Gallagher, hereby request that the Plaintiff revise her Complaint in the following manner:

FIRST REQUESTED REVISION

I. PORTION OF PLEADING SOUGHT TO BE REVISED:

Count one paragraph 5 which states "In September of 2018, storm water runoff entered the property."

II. REQUESTED REVISIONS:

As to Count I, paragraph 5, Defendants request that the Plaintiff revise her Complaint in such a manner as to state with particularity the exact date upon which the incident alleged occurred.

III. REASON FOR REVISIONS:

Connecticut Practice Book Section 10-35 provides that a Request to Revise is proper "Whenever any party desires to obtain (1) a more complete or particular statement of the allegations of an adverse party's pleading, or (2) the deletion of any unnecessary,

repetitious, scandalous, impertinent, immaterial or otherwise improper allegations in an adverse party's pleading, or (3) separation of causes of action which may be united in one complaint when they are improperly combined in one count, or the separation of two or more grounds of defense improperly combined in one defense, or (4) any other appropriate correction in an adverse party's pleading.

In the instant matter, the Plaintiffs' Complaint, in sum, alleges that runoff from the Defendant's storm water drainage pipe caused damage to their property. However, the dates upon which the alleged incidents occurred are not specified in the Complaint.

In Count I paragraph 5, the Plaintiff alleges that "in September of 2018 storm water runoff entered the (Plaintiff's) property". That occurrence is thereafter referred to in the complaint as the "2018 incident".

As written, the Complaint fails to properly put the Defendants on notice of the Plaintiff's claim. The dates of the alleged occurrences is a material fact and should be specified in the complaint. As is, the Defendants are unable to form an intelligible response to the Complaint. Furthermore, the Defendants are unable to properly defend this claim without knowledge of the date upon which the alleged occurrence arose. Thus the Defendants seek a more complete or particular statement of the allegations in the Complaint.

IV. OBJECTION:

The Plaintiff is not required to plead the exact date the incident occurred as it is not an essential element of an action for nuisance. See Pestey v. Cushman, 259 Conn. 345 at 352-254 (Conn. 2002) (The court reviewed the essential elements of a cause of action for private nuisance and did not include nor reference that a Plaintiff is required to prove the exact date of the interference). The Plaintiff is alleging that stormwater runoff entered her property in the month of September of 2018. The Defendants should have no issue determining whether they were aware of an incident taking place during that concise time frame.

SECOND REQUESTED REVISION

I. PORTION OF PLEADING SOUGHT TO BE REVISED:

Count one paragraph 8 which provides "In December of 2019, storm water runoff again entered the property."

II. REQUESTED REVISIONS:

Defendants request that the Plaintiff revise her Complaint to state the exact date the incident alleged occurred.

III. REASON FOR REVISION:

See reason for first requested revision.

IV. OBJECTION:

The Plaintiff is not required to plead the exact date the incident occurred as it is not an essential element of an action for nuisance. See Pestey v. Cushman, 259 Conn. 345 at 352-254 (Conn. 2002) (The court reviewed the essential elements of a cause of action for private nuisance and did not include nor reference that a Plaintiff is required to prove the exact date of the interference). The Plaintiff is alleging that stormwater runoff entered her property in the month of September of 2018. The Defendants should have no issue determining whether they were aware of an incident taking place during that concise time frame.

THIRD REQUESTED REVISION

I. PORTION OF PLEADING SOUGHT TO BE REVISED:

Count two paragraph 13 which states "the defendants failed, neglected, or otherwise refused to remediate the condition on 71 Chamberlain with a reckless indifference to the rights of the plaintiff."

II. REQUESTED REVISIONS:

As to Count II paragraph 13, Defendants request that the word "reckless" be removed.

III. REASON FOR REVISIONS:

Connecticut Practice Book Section 10-35 provides that a Request to Revise is proper "Whenever any party desires to obtain.....(2) the deletion of any unnecessary, repetitious,

scandalous, impertinent, immaterial or otherwise improper allegations in an adverse party's pleading.....

In the instant matter, the Plaintiffs' Complaint, in sum, alleges that runoff from the Defendant's storm water drainage pipe caused damage to their property. In Count II paragraph 13, the Plaintiff alleges that "The Defendants' failed, neglected, or otherwise refused to remediate the condition on 71 Chamberlain with a reckless indifference to the rights of the Plaintiff. Count II is a claim for nuisance, not recklessness. There is no count for recklessness on behalf of the Plaintiff. The word "reckless" should be removed as it is only there to inflame the jury and is not part of the claim being made.

IV. OBJECTION:

"Punitive damages are awarded when the evidence shows a reckless indifference to the rights of others or an intentional and wanton violation of those rights." (emphasis added) Bhatia v. Debek, 287 Conn. 397 at 420 (Conn. 2008)(quoting Vandersluis v. Weil, 176 Conn.35 at 358 (Conn. 1978)).

In the instant matter, the Plaintiff has requested the court award attorney's fees and the cost of litigation in her prayer for relief. The court in Bhatia was clear that one of the requirements for obtaining punitive damages is evidence showing "reckless indifference to the rights of others". Id. at 358 The Defendants' request relies on the presupposition that the phrase "reckless" serves no purpose. The Plaintiff's purpose is to plead the facts required to request punitive damages.

FOURTH REQUESTED REVISION

I. PORTION OF PLEADING SOUGHT TO BE REVISED:

Count three paragraph 14.

II. REQUESTED REVISIONS

As to Count III paragraph 14, Defendant seeks to delete the entire paragraph as it is duplicative of Count III paragraph 11.

III. REASON FOR REVISIONS:

Connecticut Practice Book Section 10-35 provides that a Request to Revise is proper "Whenever any party desires to obtain.....(2) the deletion of any unnecessary, repetitious, scandalous, impertinent, immaterial or otherwise improper allegations in an adverse party's pleading.....

Count III paragraph 14 is duplicative of Count III paragraph 11 and should be removed for the sake of clarity in the pleadings.

IV. OBJECTION:

Under Connecticut law, "the essential elements of a cause of action in negligence are well established: duty; breach of that duty; causation; and **actual injury**." (emphasis added) (internal quotations omitted) Ryan Transportation, Inc. v. M and G Associates, 266 Conn. 520 at 525 (Conn. 2003).

Count III paragraph 14 of the Plaintiff's complaint pleads facts to establish "actual injury" which, as the court in Ryan Transportation, Inc. restated, is an essential element of a

cause of action for negligence. The Plaintiff cannot revise her complaint to remove Count III paragraph 14 as such revision would remove from the Plaintiff's complaint an essential element of the cause of action of negligence.

THE PLAINTIFF
DIANA PIAZZA

By /s/ 435799
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CERTIFICATION

This is to certify that a copy of the foregoing was mailed, postage prepaid, this 30th day
of September, 2020, to:

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/s/ 435799

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